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IN THE

Supreme Court of the United States

October Term, 1975

No. 75-288

SAMUEL H. SLOAN,

Petitioner,

against

COURT OF APPEALS OF NEW YORK,

Respondent.

BRIEF IN OPPOSITION TO GRANTING MANDAMUS

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Decision Below

The New York State Court of Appeals denied petitioner's request that it waive the educational requirements for admission to the bar of the State of New York and permit petitioner to take the bar examination without first having met these requirements.

Question Presented

Does the petition raise a substantial constitutional question where rules attacked which require pre-legal education and the study of law prior to taking the bar examination are reasonably related to insuring competency in the practice of law?

Statute and Rules Involved

The source of the New York Court of Appeals rule making power with respect to admission to practice law is New York

Judiciary Law § 53. Insofar as pertinent to the instant application, the statute reads:

> N.Y. Judiciary Law § 53
>
> "1. The court of appeals may from time to time adopt, amend, or rescind rules not inconsistent with the constitution or statutes of the state, regulating the admission of attorneys and counsellors at law, to practice in all the courts of record of the state.
>
> * * *"

The rules adopted by the New York Court of Appeals, with respect to admission to practice, are published in 22 New York Code Rules and Regulations, Part 520.

The rules attacked by the petitioner in the instant application are set forth in full at pages 26 through 31 of petitioner's appendix.

In summary, Rule 520.3 which deals with pre-legal education requires at least three years of acceptable work in an accredited post secondary institution. Equivalent work that is satisfactory to the New York State Education Department is also permitted. Both Rules 520.4 and 520.5 relate to the study of law and require that before taking the New York State bar examination, an applicant must submit proof that he commenced the study of law after reaching his eighteenth birthday and after complying with pre-legal educational requirements (22 NYCRR 520.3). In addition, Rule 520.4 requires attendance and graduation with a degree in law from an approved law school. Rule 520.5 permits an applicant, in lieu of obtaining a degree in law, to study law in the office of an attorney admitted to practice law in New York State. This rule requires at least one year's attendance at an approved law school.

Statement of the Case

Petitioner seeks a writ of mandamus from this Court compelling the New York Court of Appeals to waive its rules requiring pre-legal education (22 NYCRR 520.3) and legal education (22 NYCRR 520.4, 520.5). Petitioner concedes that he meets none of the requirements of these rules and will be unable to take the New York State bar examination unless the prayed-for writ is issued.

In a petition sworn to June 4, 1975, petitioner requested that the New York Court of Appeals waive its rules requiring pre-legal and legal education. The petition was denied by the New York Court of Appeals on July 3, 1975.

Petitioner alleges that these rules violate his rights under the First, Fifth and Fourteenth Amendments to the United States Constitution.

ARGUMENT

Petitioner fails to raise a substantial constitutional question. His Petition is frivolous and without merit and should be denied.

A State may regulate an occupation affecting the public interest by establishing qualifications which are reasonably related to insuring competency (*Dent* v. *West Virginia*, 129 U.S. 114 [1889]; *Groves* v. *Minnesota*, 272 U.S. 425, 428 [1926]; *Williamson* v. *Lee Optical Co.*, 348 U.S. 483 [1955]; *Kotch* v. *Board of River Pilots Commissioners*, 330 U.S. 552 [1947]).

In regulating admission to the practice of law it was recognized that "*** a State can require high standards of qualification such as proficiency in its law, before it admits

an applicant to the bar, ***" (*Schware* v. *Board of Bar Examiners*, 353 U.S. 232, 239 [1957]).

The educational requirements promulgated by the Court of Appeals have a direct and substantial relationship to an applicant's qualifications to practice law (*cf. Graves* v. *Minnesota, supra*).

In a similar attack on a Massachusetts educational requirement, the First Circuit, United States Court of Appeals wrote:

> "*** a good lawyer must also possess much more than merely abstract knowledge. He must be skilled in legal research and writing, and may often be required to present his arguments convincingly in Court. While it is of course possible to develop a high degree of proficiency in developing these skills without ever having attended law school, we cannot say that a state acts irrationally when it seeks to insure that an attorney will have been exposed to such matters before he undertakes the actual representation of clients" (*Lombardi* v. *Tauro*, 470 F. 2d 798, 800 [1st cir., 1972]).

The obstacles that stand between petitioner and his desire to take the bar examination are reasonably related to the practice of law and may be attained by "reasonably study or application***" (*Dent* v. *West Virginia*, 129 U.S. at 122).

Petitioner's attack on the constitutionality of the educational requirements is insubstantial. The questions he seeks to litigate are frivolous and without merit (*Goosby* v. *Osser*, 409 U.S. 512 [1973]). The issuance of the extraordinary writ of mandamus is unwarranted.

CONCLUSION

The Petition should be denied.

Dated: October 9, 1975.

Respectfully submitted,

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